

AO 120 (Rev. 2/99)

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. C-10-4270-BZ	DATE FILED September 21, 2010	U.S. DISTRICT COURT Office of the Clerk, 450 Golden Gate Ave., 16 th Floor, San Francisco, CA 94102
PLAINTIFF ASUS COMPUTER INTERNATIONAL, a California Corporation, and ASUSTEK COMPUTER INC., a Taiwanese Corporation		DEFENDANT DENNIS W. NUSSER, an individual
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,531,529		
2 7,101,101		"Pls. See Attached Copy of Complaint"
3 7,354,209		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wickling	(BY) DEPUTY CLERK Thelma Nudo	DATE September 21, 2010
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

ORIGINAL
FILED

SEP 21 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BZ

CV 10 4270
CASE No.:

ASUS COMPUTER
INTERNATIONAL, a California
Corporation; and ASUSTEK
COMPUTER INC, a Taiwanese
Corporation,

Plaintiff,

v.

DENNIS W. NUSSER, an individual,

Defendants.

COMPLAINT FOR
DECLARATORY JUDGMENT

DEMAND FOR JURY TRIAL

1 Plaintiffs Asus Computer International ("ACI") and ASUSTeK Computer
2 Inc. ("ASUSTeK"), for its Complaint against Defendant Dennis W. Nusser ("Mr.
3 Nusser"), upon personal knowledge as to its own actions and upon information and
4 belief as to actions by others, hereby alleges as follows:

5 **NATURE OF THE ACTION**

6 1. This is an action for declaratory judgment of non-infringement and
7 invalidity of United States Patent Nos. 5,531,529 ("the '529 Patent"), 7,101,101 ("the
8 '101 Patent"), and 7,354,209 ("the '209 Patent") (collectively, "the Patents").

9 **THE PARTIES**

10 2. Plaintiff ACI is a corporation organized and existing under the laws of
11 California, with its principle place of business at 800 Corporate Way, Fremont, CA
12 94539.

13 3. Plaintiff ASUSTeK is a corporation organized and existing under the laws
14 of Taiwan, with its principal place of business located at 15, Li-Te Road, Peitou, Taipei
15 112, Taiwan.

16 4. On information and belief, Mr. Nusser is an individual residing at 512 N.
17 Victoria Terrace, Fort Lauderdale, FL 33301. Mr. Nusser purports to be the inventor and
18 owner of the '101 patent, the '529 patent, and the '209 patent.

19 **JURISDICTION AND VENUE**

20 5. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201
21 *et seq.*, and under the patent laws of the United States, Title 35 of the United States Code.
22 This Court has jurisdiction over this action pursuant to 35 U.S.C. § 282 and 28 U.S.C.
23 §§ 1331, 1338(a), and 2201-2202.

24 6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b)
25 because a substantial part of the events giving rise to the claims at issue occurred in this
26 District.

8. This case is an Intellectual Property Action under Civil Local Rule 3-5(c) and shall be assigned on a district-wide basis.

9. The '529 Patent is titled "Input Apparatus Scaled for Non-Adults and Adults Having Small Hands" and it issued on July 2, 1996 from an application filed on January 26, 1995. On information and belief, Mr. Nusser is the sole inventor and owner of the '529 Patent. A true and correct copy of the '529 Patent is attached as Exhibit A.

10. The '101 Patent is titled "Input Apparatus for People Having Small hands" and it issued on September 5, 2006 from an application filed on August 31, 1994. On information and belief, Mr. Nusser is the sole inventor and owner of the '101 Patent. A true and correct copy of the '101 Patent is attached as Exhibit B.

11. The '209 Patent is titled "Input Apparatus for People Having Small Hands" and it issued on April 8, 2008 from an application filed on July 28, 2006. On information and belief, Mr. Nusser is the sole inventor and owner of the '209 Patent. A true and correct copy of the '209 Patent is attached as Exhibit C.

12. In March of 2008, ACI received a letter from Mr. Nusser saying that he owned the '101 and '529 patents. In that letter, he said that the ASUS Eee 701 and Eee 900 notebook computers "fall within one or more claims of my patents." A true and correct copy of this letter is attached as Exhibit D.

13. Between the spring of 2008 and the fall of 2010, ACI, ASUSTeK, Mr. Nusser, and Mr. Nusser's attorney communicated by telephone and email regarding Mr.

1 Nusser's allegations that Asus computers infringe Mr. Nusser's patents, and about the
2 invalidity of those patents.

3 14. On September 21, 2010 Jacky Lu of ASUSTeK received an email from
4 Peter Herman, counsel to Mr. Nusser. In that email, which was part of a long email
5 string, Mr. Herman states "we have not heard from you, therefore, at this point we must
6 move forward to pursue a lawsuit" and "we are in the process of preparing the
7 complaint." A true and correct copy of this email string is attached as Exhibit E.

8 **COUNT I**
9 **(Declaratory Judgment of Non-Infringement and/or**
10 **Invalidity of the '529 Patent)**

11 15. ASUS re-alleges and incorporates by reference Paragraphs 1 through 14 as
12 if fully set forth herein.

13 16. As a result of the acts described in the foregoing paragraphs, there exists a
14 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
15 declaratory judgment.

16 17. An actual and justiciable controversy exists between ASUS and Mr. Nusser
17 as to whether the '529 patent is infringed by ASUS and/or its customers. A judicial
18 declaration is necessary and appropriate so that ASUS may ascertain its rights regarding
19 the Patents.

20 18. An actual and justiciable controversy exists between ASUS and Mr. Nusser
21 as to whether the '529 patent is valid. A judicial declaration is necessary and appropriate
22 so that ASUS may ascertain its rights regarding the Patents.

23 **COUNT II**
24 **(Declaratory Judgment of Non-Infringement and/or**
25 **Invalidity of the '101 Patent)**

26 19. ASUS re-alleges and incorporates by reference Paragraphs 1 through 18 as
if fully set forth herein.

Dr. Robert Berman, D.D.

21. An actual and justiciable controversy exists between ASUS and Mr. Nusser as to whether the '101 patent is infringed by ASUS and/or its customers. A judicial declaration is necessary and appropriate so that ASUS may ascertain its rights regarding the Patents.

22. An actual and justiciable controversy exists between ASUS and Mr. Nusser as to whether the '101 patent is valid. A judicial declaration is necessary and appropriate so that ASUS may ascertain its rights regarding the Patents.

COUNT III
(Declaratory Judgment of Non-Infringement and/or Invalidity of the '209 Patent)

23. ASUS re-alleges and incorporates by reference Paragraphs 1 through 22 as if fully set forth herein.

24. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

25. An actual and justiciable controversy exists between ASUS and Mr. Nusser as to whether the '209 patent is infringed by ASUS and/or its customers. A judicial declaration is necessary and appropriate so that ASUS may ascertain its rights regarding the Patents.

26. An actual and justiciable controversy exists between ASUS and Mr. Nusser as to whether the '209 patent is valid. A judicial declaration is necessary and appropriate so that ASUS may ascertain its rights regarding the Patents.

1 **PRAYER FOR RELIEF**

2 27. WHEREFORE, ASUS respectfully requests that judgment be entered in its
3 favor and prays that the court grant the following relief:

- 4 A. A declaration that ASUS's products have not infringed and do not infringe,
5 either directly or indirectly, any valid and enforceable claim of the Patents;
6 B. A declaration that the claims of the Patents are invalid;
7 C. An order enjoining Mr. Nusser or his agents, counsel, servants, employees,
8 or all persons in active concert or participation therewith, from charging
9 infringement of, or instituting any action of infringement of, the Patents
10 against ASUS and/or any of ASUS's customers;
11 D. An order declaring that ASUS is the prevailing party and that this is an
12 exceptional case under 25 U.S.C. § 285, and an award of its reasonable
13 attorneys' fees, expenses, and costs in this action; and
14 E. Such other further relief as this Court may deem just and proper.

15 **DEMAND FOR A JURY TRIAL**

16 28. Pursuant to Federal Rule of Civil Procedure 38(b) and Northern District of
17 California Rule 3-6(a), ASUS respectfully requests a jury trial on all issues so triable.

18 Dated: September 21, 2010

Respectfully submitted,

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